

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MARY WILKINS,

Plaintiff,

vs.

COLLEEN COLVIN, COMMISSIONER OF
 SOCIAL SECURITY,

Defendant.

Case No. 2:13-cv-00918-JCM-PAL

ORDER

(IFP App - Dkt. #1)

Plaintiff Mary Wilkins has requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis and submitted a Complaint. *See* Motion to Proceed In Forma Pauperis (Dkt. #1). This proceeding was referred to this court by Local Rule IB 1-9.

I. *In Forma Pauperis* Application

Plaintiff has submitted the affidavit required by § 1915(a) showing an inability to prepay fees and costs or give security for them. Accordingly, the request to proceed in forma pauperis will be granted pursuant to 28 U.S.C. § 1915(a). The court will now review Plaintiff's Complaint.

II. Screening the Complaint

Upon granting a request to proceed in forma pauperis, a court must additionally screen a complaint pursuant to § 1915(a). Federal courts are given the authority dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a complaint under § 1915(a), the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of the complaint that the

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1 deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir.
2 1995).

3 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint for
4 failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is essentially a
5 ruling on a question of law. *North Star Intern. v. Arizona Corp. Comm'n*, 720 F.2d 578, 580 (9th Cir.
6 1983). In considering whether the plaintiff has stated a claim upon which relief can be granted, all
7 material allegations in the complaint are accepted as true and are to be construed in the light most
8 favorable to the plaintiff. *Russell v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980). Allegations of a
9 pro se complaint are held to less stringent standards than formal pleading drafted by lawyers. *Haines v.*
10 *Kerner*, 404 U.S. 519, 520 (1972) (per curiam).

11 Plaintiff's Complaint alleges that she is disabled and entitled to disability insurance benefits.
12 Before Plaintiff can sue the SSA in federal court, he must exhaust his administrative remedies. 42
13 U.S.C. § 405(g). *See Bass v. Social Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989) (per curiam)
14 ("Section 405(g) provides that a civil action may be brought only after (1) the claimant has been party
15 to a hearing held by the Secretary, and (2) the Secretary has made a final decision on the claim").
16 Generally, if the SSA denies a claimant's application for disability benefits, he can request
17 reconsideration of the decision. If the claim is denied at the reconsideration level, a claimant may
18 request a hearing before an Administrative Law Judge ("ALJ"). If the ALJ denies the claim, a claimant
19 may request review of the decision by the Appeals Council. If the Appeals Council declines to review
20 the ALJ's decision, a claimant may then request review by the United States District Court. *See*
21 *generally* 20 C.F.R. §§ 404, 416. Plaintiff has not alleged she exhausted her administrative remedies.

22 Additionally, the Complaint alleges that it is filed outside the sixty-day period to commence a
23 civil action within sixty days after notice of a final decision of the Commissioner. *Id.* Plaintiff has not
24 alleged she has received an extension of time in which to file a civil action in federal court. For both of
25 these reasons, the court will dismiss Plaintiff's Complaint with leave to amend. If Plaintiff chooses to
26 amend her Complaint, the Complaint should state the nature of Plaintiff's disability, when Plaintiff
27 claims she became disabled, and when and how she exhausted his administrative remedies. It should
28 also contain a plain, short, and concise statement identifying the nature of Plaintiff's disagreement with

the determination made by the Social Security Administration and show that Plaintiff is entitled to relief. A district court can affirm, modify, reverse, or remand a decision if Plaintiff has exhausted his administrative remedies and timely filed a civil action. However, judicial review of the Commissioner's decision to deny benefits is limited to determining: (a) whether there is substantial evidence in the record as a whole to support the findings of the Commissioner; and (b) whether the correct legal standards were applied. *Morgan v. Commissioner of the Social Security Adm.*, 169 F.3d 595, 599 (9th Cir. 1999). Based on the foregoing,

IT IS ORDERED that:

1. Plaintiff's request to proceed in forma pauperis is GRANTED. Plaintiff shall not be required to pay the filing fee of three hundred fifty dollars.
2. Plaintiff is permitted to maintain this action to conclusion without the necessity of prepayment of any additional fees or costs or the giving of a security therefor. This Order granting leave to proceed in forma pauperis shall not extend to the issuance of subpoenas at government expense.
3. The Clerk of Court shall file the Complaint.
4. Plaintiff's Complaint is **DISMISSED** with leave to amend.
5. Plaintiff shall have until **July 1, 2013**, to file her amended complaint, if she believes she can correct the noted deficiencies. The amended complaint must be a complete document in and of itself, and will supersede the original complaint in its entirety. Plaintiff shall clearly title the amended complaint as such by placing the words "FIRST AMENDED COMPLAINT" on page 1 in the caption, and Plaintiff shall place the case number, **2:13-cv-00918-JCM-PAL**, above the words "FIRST AMENDED" in the space for "Case No."
7. Plaintiff is expressly cautioned that if she does not timely file an amended complaint in compliance with this order, this case may be immediately dismissed.

Dated this 4th day of June, 2013.


 PEGGY A. LEEN
 UNITED STATES MAGISTRATE JUDGE